The plaintiff alleged that he had built up a large patronage for himself as an accountant; that he had employed the defendant as his confidential manager; and that since his discharge the defendant has made use of information derived from plaintiff's list of customers to solicit the patronage of these customers for himself. The defendant demurred. *Held*, that the complaint sets forth a good cause of action and that an injunction issue. *Goldschmidt* v. *Sachs*, 162 N. Y. Supp. 323 (Sup. Ct., N. Y. Cty.).

If a servant on quitting his employer carry away with him a list of customers with which he had been entrusted, or a copy of such list, it is a breach of his "duty of loyalty," and he may be compelled to return or destroy the list so taken. *Grand Union Tea Co.* v. *Dodds*, 164 Mich. 50, 128 N. W. 1090. Some cases go further and restrain him from soliciting the patronage of any customer whose name appeared on the list. *Stevens & Co.* v. *Stiles*, 29 R. I. 399, 71 Atl. 802. In a sense the more drastic decree is punitive. Yet it is obvious that the other would, in practice, often fail to afford plaintiff adequate protection. A more difficult problem arises when the former employee relies only upon his memory for the names communicated to him. Here no more definite test seems possible than whether, in the light of all the facts, the employer's list of customers may fairly be termed a "trade secret." *Boosing* v. *Dorman*, 148 App. Div. 824, 133 N. Y. Supp. 910. Thus, for example, if the customers did not deal exclusively with plaintiff and could readily have been located by any business competitor, the departing employee need not "wipe clean the slate of his memory," and no injunction will issue. *Boosing* v. *Dorman*, *supra*; *Peerless Pattern Co.* v. *Pictorial Review*, 147 App. Div. 715, 132 N. Y. Supp. 37. But if the customers are exclusive patrons, likely because of a system of trading stamps to continue their dealings with plaintiff, and whose names and patronage have been acquired by years of enterprise and advertising, the former employer is entitled to protection. *Witkop & Holmes Co.* v. *Boyce*, 61 Misc. 126, 112 N. Y. Supp. 874, affirmed 131 App. Div. 922, 115 N. Y. Supp. 1150; *Witkop & Holmes Co.* v. *Boyce*, 64 Misc. 374, 118 N. Y. Supp. 461. In each case the particular facts must control. On the one hand the fruits of business industry and perseverance must be protected in so far as is possible; on the other, the whole policy of the law demands that budding competition be not stifled, that employees be not arbitrarily deprived of the increased market value which is a legitimate perquisite of protracted service in any line of business. Both New York cases seem, therefore, sound and reconcilable.

TRANSFER OF STOCK — LIABILITY OF A BROKER, ACTING FOR AN UNDISCLOSED PRINCIPAL, FOR CALLS ON STOCK. — The registered owner of bank stock, subject to statutory double liability, sold to a broker at auction. The broker, unknown to the vendor, was acting for a principal. The certificates, assigned in blank, were turned over to the broker who paid for them. He then assigned them to his principal, and collected his commission. Subsequently, and before any change of name on the registry of the bank, there was a call on the stock, which the original vendor, as the owner of record, was forced to pay. He thereupon sued the broker for reimbursement. *Held*, that he may not recover. *Richards* v. *Robin*, 162 N. Y. Supp. 12 (App. Div.).

Under the law of New York, although a registered shareholder is liable to the corporation, the legal title to the shares nevertheless passes with delivery regardless of any rules of the corporation to the contrary. See 8 N. Y. CONSOL. LAWS, 1989, 1990. Surely, then, there must be recovery in quasi-contract from the title-holder of the shares when the call was assessed, for the payment by the shareholder of record. But such liability cannot extend to the agent in the principal case, for he was not the holder of the shares when the call was made. At common law, although the title to the shares did not pass, the vendee of

stock was likewise liable to indemnify his vendor for calls subsequent to the purchase. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., § 176; 2 COOK, CORPORATIONS, 7 ed., § 258. This result was reached by imposing a constructive trust on the vendor for all dividends paid him as the registered owner, with a consequent right to exoneration from all calls from which he relieved the beneficial owner. *Kellogg* v. *Stockwell*, 75 Ill. 68; *Humble* v. *Langston*, 7 M. & W. 517, 530; *Castellan* v. *Hobson*, L. R. 10 Eq. Cas. 47, 51. See *Locke* v. *Farmer's, etc. Trust Co.*, 140 N. Y. 135, 143, 35 N. E. 578, 580. But under this trust theory it is equally clear that the agent cannot be held, for the holder of the shares alone would be the beneficiary. Some courts, however, allow the registered holder to recover from his vendee on the basis of an implied contract that he shall be held harmless. *Walker* v. *Bartlett*, 18 C. B. 845. See *Brigham* v. *Mead*, 92 Mass. 245. Now in the principal case, as the agent bought to all intents and purposes as the principal, he may be held to the liability of a principal. See 2 MECHEM, AGENCY, §§ 1729, 2419. The question therefore arises, granted that such warranty of indemnification exists, is it limited to the time during which the vendee holds the stock? The basis of this contract theory is the analogy to the promise by the sublessee implied on the assignment of a lease, to indemnify the original lessee for breach of the covenant to pay rent. See *Burnett* v. *Lynch*, 5 B. & C. 589. But under certain circumstances, even this promise in the case of land is considered limited to the sublessee's period of ownership of the lease. *Walker* v. *Physick*, 5 Pa. St. 193. In the case of stocks, the ease of transfer and the disinclination that must be present of a vendor to be liable for all subsequent vendees must rebut any implied promise to indemnify for calls after having transferred the stock. The cases have so held. *Rogers* v. *Tolland*, 43 Pa. Super. Ct. 248, 255. See *Walker* v. *Bartlett*, 18 C. B. 845, 862.

TRUSTS — POWERS AND OBLIGATIONS OF TRUSTEES — OBLIGATION TO PREFER ONE SORT OF CESTUIS OVER ANOTHER. — A testatrix bequeathed all her property to trustees to convert and raise a fund of which the plaintiff was to be life-tenant. The trustees were given power to delay sale or conversion; but in the meantime the plaintiff was to receive three and one-half per cent interest. The trustees decided, *bona fide*, as the court found, to delay conversion until after the war, when a better price might be obtained. The plaintiff desires an immediate conversion in order that he may obtain a larger interest on the money. He sues to compel the trustees to convert. *Held*, that the plaintiff must be preferred to the residuary *cestuis*. *Re Charteris*, 179 L. T. J. 179 (Ch. D.).

A court will interfere to prevent the dishonest or capricious use of the power of a trustee. *Dingman* v. *Beall*, 213 Ill. 238, 72 N. E. 729. But when, as in the principal case, the trustee's discretion is exercised honestly, it cannot in general be reviewed. *Smith* v. *Wildman*, 37 Conn. 384. Thus when realty is devised to trustees to convert, with discretion to postpone the sale, they may generally exercise this discretion without interference from the court. *In re Blake*, 29 Ch. D. 913. The tendency, however, is not to allow the trustees to vary the relative interests of different classes of the beneficiaries. *In re Courtier*, 34 Ch. D. 136; *In re Rowlls*, [1900] 2 Ch. 107. See *Hampden* v. *Earl of Buckinghamshire*, [1893] 2 Ch. 531, 544. But even this will be allowed if it is clear that the testator intended it. *In re Pitcairn*, [1896] 2 Ch. 199. The principal case, therefore, can only stand if the power of delaying conversion was given primarily for the purpose of protecting the plaintiff. A more natural construction would be that it was given to protect the residuary *cestuis*, especially in view of the fact that the plaintiff was to be paid a definite rate of interest before the conversion.

VOLUNTARY ASSOCIATIONS — EFFECT OF INCORPORATION AND SUBSEQUENT DISSOLUTION. — A beneficial society was formed as an unincorporated associa-